

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB74

Endangered and Threatened Wildlife and Plants; Final Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes three additional permanent manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. All waterborne activities will be prohibited in these sanctuaries from November 15 through March 31 of each year. This final action will prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The total number of sanctuaries in Kings Bay is increased from three (10.7 acres) to six (39.0 acres) to

accommodate the growing number of manatees using the area each winter, and to offset the harassment from increasing public use. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

EFFECTIVE DATE: June 13, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at the above address, 904/232-2580; or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., Suite 206, St. Petersburg, Florida 33702, 813/893-3651.

SUPPLEMENTARY INFORMATION:

Background

Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main

spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. Since 1980, the number of manatees using Kings Bay has increased from 100 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. As manatee habitat is lost elsewhere on the Florida peninsula, Kings Bay is becoming more important. Kings Bay is one of the last *natural* warm-water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay and especially the refuge's main spring to Crystal River and Citrus County centers around recreational SCUBA diving, snorkeling and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep). Due in part to national and international publicity manatees have received in recent years, the number of divers visiting Kings Bay has increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River's economy. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm-water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman *et al.* 1985, Buckingham 1990). It is important to note that, although a few local business people feared losses of revenue following the implementation of the sanctuary additions, no evidence of any losses have been observed during the 2 years the sanctuaries were in effect under emergency rules.

Therefore, the Service, by this rule, is expanding the sanctuary area in Kings Bay to provide manatees additional undisturbed habitat during the cold weather months. These sanctuaries will exclude all waterborne activities by humans from November 15 through March 31 each year. The total sanctuary area, consisting of less than 10 percent of the area of Kings Bay, allows the remaining 90 percent of the bay to remain open to recreational and commercial waterborne activities. The sanctuary areas were carefully selected to provide maximum protection for manatees and minimum impact on divers. Public input into the selection of sanctuary areas was obtained during a workshop held in Crystal River on March 21, 1991. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

The sanctuary addition at Magnolia Springs adds 1.5 acres to the previous Magnolia Springs Sanctuary. This short, horseshoe-shaped section of canal joins a canal that feeds directly into Kings Bay. The addition extends the protected area around a significant artesian spring within the original sanctuary, providing additional protection for the small but consistent number of manatees, most notably cows and calves, that use the area for giving birth, resting, and as a warm-water refuge.

The sanctuary on the north and east sides of Buzzard Island contains 18.0 acres of shallow grassbeds along the northwestern edge and down the length of the east side of Buzzard Island. This area is primarily used by manatees as a feeding area. It has limited value as a warm-water sanctuary but contains abundant vegetation within a short distance from the warm waters in the southern part of Kings Bay.

The sanctuary at Tarpon Springs contains 4.6 acres along the northwestern side of Banana Island. This sanctuary contains a small spring and is used by manatees as a thermal refuge, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key provides a protected feeding area close to the warm-water sanctuaries in the south bay.

A standard survey of the sanctuary areas has been performed. The new areas will be delineated with buoys, as are existing sanctuaries.

Summary of Comments and Recommendations

A public workshop, advertised in the Citrus County Chronicle, was held on March 21, 1991 to allow local citizens

and other interested parties the opportunity to discuss the pros and cons of different sanctuary locations. A number of the alternatives discussed at the workshop were described in the Service's draft Environmental Assessment supporting the Finding of No Significant Impact that was approved by the Regional Director on August 23, 1991. The sanctuaries as they appear in this rule were selected on the basis of known use by manatees, availability of resources, and minimal impact on recreational use patterns and homeowners. These sanctuaries were implemented for two successive winters, 1991–2 and 1992–3, by two separate emergency rules (57 FR 5988 and 58 FR 5643) when completion of the rulemaking process was delayed. Legal notices were published in the "Citrus County Chronicle" prior to the implementation of the emergency rules, and each emergency rule offered the Environmental Assessment for review by members of the public. The proposed rule, published in the Federal Register of May 13, 1993 (58 FR 28381), offered a public hearing, if requested, and announced a public comment period to end July 12, 1993. Following several requests for a public hearing, a notice was published in the Federal Register of June 28, 1993 (58 FR 34556) to announce a hearing and extension of the comment period. The hearing was held July 15, 1993, at the Coastal Region Library in Crystal River and the comment period was extended until July 30, 1993, to allow time for written comments to be received following the hearing.

At the July 15, 1993, hearing, a clear majority of the verbal comments and small minority of the written comments consisted of statements opposing either Federal regulations on recreational use of Kings Bay and the Crystal River National Wildlife Refuge in general, and/or the procedures used to implement the sanctuaries. Few people at the hearing addressed the sanctuary issue directly and there were several misconceptions as to what the rule would include. Many expressed a fear that future regulations would either eliminate or so discourage recreational boating that the local economy would be negatively impacted. Many speakers believed the preferences of local citizens and local political representatives should have been given more weight. Others feared that future regulations would include closing of the refuge, including the main spring. Although nearly every speaker expressed affection for, or at least acceptance of, manatees in Kings Bay, many believed manatee

by the Paperwork Reduction Act of 1990.

National Environmental Policy Act

The Environmental Assessment prepared in conjunction with this rule is on file in the Service's Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. It may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

The primary author of this final rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as follows:

1. The authority citation of Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108, List of designated manatee protection areas, by revising paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), removing paragraph (a)(7), and

revising the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision: Containing 3.4 acres, more or less.

(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°01'23" W for 4466.90 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 10°05'38" W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37°34'41" E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73°26'46" E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17°50'16" E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71°48'58" W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71°48'58" W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water

line northerly and westerly to a point lying S 10°05'38" E of the point of beginning; Then go N 10°05'38" W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28°55'06" E for 2546.59 feet to a 4-inch diameter iron pipe marking the Point of Beginning; Then go N 44°23'41" W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33°53'16" E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31°51'55" E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31°51'55" E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said main high water line to a point lying S 44°23'41" E from the point of beginning; Then go N 44°23'41" W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°43'00" E for 1477.54 feet to a 10-inch diameter concrete monument marking the Point of Beginning; Then go N 06°24'58" W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65°41'12" E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55°40'52" E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65°15'06" W for 857.22 feet to the point of beginning; Containing 4.0 acres, more or less.

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BILLING CODE 4310-65-P

Dated: March 28, 1994.

George T. Frampton Jr.,

*Assistant Secretary for Fish and Wildlife and
Parks.*

[FR Doc. 94-11343 Filed 5-11-94; 8:45 am]

BILLING CODE 4310-66-P
